Supreme Court, U.S.
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No. 04-1063

In the

SUPREME COURT OF THE UNTED STATES

Rita C. Ferguson,

Petitioner,

v.

Township of Hamburg,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MICHIGAN COURT OF APPEALS

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Petitioner received actual and timely notice of the creation of a special assessment district in which her property was included and whether Petitioner then received actual notice of the initial assessment sufficiently prior to when its payment was due in order to have either prevented the payment or contested the validity of the assessment?

2. Whether Petitioner's property was properly included in the special assessment district?

3. Whether the amount of the special assessment was disproportionate to the benefit bestowed?

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STATUTES AND ORDINANCES INVOLVED

The statutes and ordinances cited in this brief are reproduced in the Appendix.

STATEMENT OF THE CASE

Petitioner owns a four-unit apartment building located at 11505 Dunlavy Street in Hamburg Township, Michigan, hereinafter referred to as the "Property." On October 26, 1993 Petitioner executed a mortgage on the Property. Section 2 of the mortgage requires Petitioner to pay to the mortgagee funds sufficient for, *inter alia*, yearly taxes and assessments. The mortgagee is then required to pay those taxes and assessments from the funds received from the mortgagor.

Petitioner currently lives at 9715 Daisy Lane, Dexter, Michigan.

During calendar year 2000 Respondent proposed, pursuant to its Ordinance 69, the creation of a new special assessment district to pay for the installation of a sanitary sewer system that would benefit an area in which the Property is located. Respondent timely mailed on June 21, 2000 and December 22, 2000 the notices of hearings required to create such a district. The hearings were held July 6, 2000 and January 15, 2001. Newspaper publication was proper.

Respondent for several years had mailed correspondence to Petitioner at the Property's address, that is, at 11505 Dunlavy Street. In the spring of 2000 Petitioner asked that her mail be sent to 9715 Daisy Lane. The change of address was made in Respondent's database for tax year 2001. It was not made in earlier tax year databases. Respondent's utilities coordinator who was responsible for mailing the notices, used the database for tax year 2000 to

obtain addresses for affected property owners for purposes of mailing the notices of the June 21, 2000 and January 15, 2001 hearings. Consequently the notices of the hearings were sent to Petitioner at 11505 Dunlavy Street. Petitioner claims that she did not receive mailed notice of the special assessment hearings. Petitioner did, however, receive actual notice of her opportunity to appear at a public hearing in order to object to her assessment and of her right to appeal that assessment to the Michigan tax tribunal. Further, Petitioner also received actual notice of the amount of the assessment that would be placed on her tax bill. This notice was received prior to when Petitioner's mortgagee paid that bill.

Respondent's consulting engineer personally visited Petitioner and her husband on October 7, 2000 at the Property and informed her that the district would be created, that there would be a special assessment to pay for the district, that she could object to the amount of her assessment at a public hearing, and that if still not satisfied, could appeal the assessment to the Michigan tax tribunal. During this visit the consulting engineer and Petitioner agreed on where to place a grinder pump that would be required for the Property's connection to the proposed sanitary sewer. Petitioner's husband signed the dated grinder pump location sheet.

On December 5, 2001 a letter was sent to each property owner within the subject assessment district which letter included an amortization chart of the property owner's sewer assessment. Respondent's utilities coordinator also sent this letter. The addresses for the December 5, 2001 mailing came from the tax year 2001 database not the tax year 2000 database. The December 5, 2001 letter and amortization chart therefore went to Petitioner at the address Petitioner had requested, viz., 9715 Daisy Lane. Petitioner received this letter.

Petitioner and her husband met with the utilities coordinator on December 10, 2001 to discuss the amount of her assessment that was indicated in the letter of December 5, 2001. Petitioner's husband thought that the cost of the sewer should be only one-third of the amount calculated by the Respondent's consulting engineer. The utilities coordinator told Petitioner and her husband that the amount they thought should be assessed might be correct for a single family home; however, Petitioner's property is a four-unit apartment building.

The first assessment for the new district appeared on the 2001 winter tax bill. Petitioner's mortgagee received the tax bill and, pursuant to the terms of the mortgage, paid it on December 14, 2001.

On January 2, 2002 an environmental sanitarian employed by the Livingston County Health Department, the county in which Respondent township is located, wrote a letter to the Petitioner reporting the results of a December 19, 2001 visit to the Property. According to the sanitarian sewage was observed on the Property's surface. Testing of the sewage confirmed that it was sanitary waste and that it was surfacing over the existing septic area. Petitioner was informed that she was in violation of the Livingston County Sanitary Code. She was ordered to connect to Respondent's sanitary sewers within 30 days. Petitioner was also informed that a permit was required to alter her sewage system and that failure to comply with the order could result in civil penalties.

On March 1, 2002 the sanitarian wrote a second letter to Petitioner. The sanitarian stated that on February 27, 2002 he inspected the Property a second time. He performed this inspection with Petitioner and her husband and with the sanitarian's supervisor. The second inspection revealed that Petitioner had directly violated the order contained in the letter of January 2, 2002 in that on or about January 16, 2002 Petitioner had reconstructed an extensive portion of the

Property's septic system without obtaining a permit. Also of concern to the sanitarian was that part of the non-permitted reconstruction took place within 30 feet of the Huron River. The Livingston County Sanitary Code mandates 100 feet as the minimum isolation distance between surface water and a septic system. The sanitarian's second letter informed Petitioner that unless she came to an agreement with Respondent's Sewer Authority by December 1, 2002 the County Health Department would require the abandonment of the septic system and the vacancy of the apartment building located on the Property.

To date no agreement has been reached between Petitioner and Respondent's Sewer Authority. As of the date of Petitioner's Brief Petitioner has not contacted Respondent's Sewer Authority in order to attempt to come to an agreement. Petitioner has, however, installed a different septic field on the Property without requesting or obtaining any of the requisite permits.

On May 8, 2002 Petitioner filed an appeal with the Michigan tax tribunal. On May 31, 2002 the tribunal entered an order that dismissed the appeal *sua sponte*. Petitioner then filed a motion asking the tax tribunal to reconsider its order of dismissal. On August 30, 2002 the tax tribunal denied the motion to reconsider. Petitioner then filed a motion with the tax tribunal requesting relief from the tax tribunal's orders. While her motion was pending before the tax tribunal Petitioner filed an appeal with the Michigan court of appeals. Subsequent to the filing of that appeal the tax tribunal denied Petitioner's motion requesting relief. The Michigan court of appeals affirmed the decision of the tax tribunal to dismiss the appeal. Petitioner then filed an application for leave to appeal to the Michigan supreme court which application was denied. Following that denial Petitioner filed her petition with this Court.

SUMMARY OF THE ARGUMENT

Petitioner received actual notice of the meeting at which the challenged special assessment district was created. Petitioner wants more.

Petitioner's Property is located within a special assessment district created by Respondent in order to pay for the installation of sewers. While Petitioner may not have received mailed notice of the meetings at which Respondent's board decided to proceed with the district, Petitioner received actual notice. That notice was received from Respondent's engineer who was responsible for the design of the sewer. The notice was delivered by the engineer while at the Property discussing with Petitioner and her husband where to locate a grinder pump required by the planned sewer. At the conclusion of that meeting Petitioner's husband signed a sheet agreeing to the location of that pump.

Subsequent to the actual notice being delivered by Respondent's engineer, there was published in the local press notice that the township board was to meet to consider the creation of the district. Finally, prior to the assessment being paid, Petitioner received a copy of the bill and met with a township official to protest. Petitioner, despite having ample time to so do, did not instruct her escrow agent to not pay the assessment nor did she then seek any judicial intervention. Petitioner ignored, then slept on her rights.

Petitioner's Property has a history of health related issues. It was to alleviate problems such as those found on the Property that the special assessment district was created. Michigan law is clear that Respondent has the authority to include the Property in the district.

Petitioner's argument that the assessment is excessive in light of the benefit bestowed misconstrues and misstates the facts of this case and the applicable law. Regardless of those errors, that issue was not decided below and should not be argued here.

ARGUMENT

I. Petitioner received actual and timely notice of the creation of a special assessment district in which her property was included and Petitioner then received actual notice of the initial assessment sufficiently prior to when its payment was due in order to have taken action to preserve any rights she may have had.

Michigan statutes concerning the creation of special assessment districts by townships, e.g., Mich. Comp. L. 41.721. *et. seq.*, Mich. Comp. L. 211.741 *et. seq.*, require a two hearing process. The initial hearing is for the township board to study issues such as whether a district should be created, the anticipated cost of the planned district if it is created, and to allow the board to hear objections to its creation and the necessity of the improvement. If the township board decides to go ahead with the district a second meeting is held to confirm the assessment. Notice is required for each of these meetings.

Mich. Comp. L. 41.724a(5) states:

> Failure to give notice as required in this section shall not invalidate an entire assessment roll, but only the assessment on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if the owner or the party in interest of that property actually received notice, waived notice, or paid any part of the assessment. If an assessment is declared void by court decree or judgment, a reassessment against the property may be made, (emphasis supplied).

Mich. Comp. L. 211.744 states:

> Any failure to give notice as required in section 1 shall not invalidate an entire assessment roll but only the assessments on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if the owner or the party in interest thereof has actually received notice, has waived notice, or has paid any part of the assessment. If any assessment is declared void by court order or judgment, a reassessment against the property may be made, (emphasis supplied).

Petitioner actually received notice. The Michigan tax tribunal so found and the court of appeals refused to reverse that fact determination. On October 7, 2000 Respondent's consulting engineer met Petitioner and her husband at the Property. The engineer explained, *inter alia*, the following to Petitioner and her husband: that a grinder pump, the sewer lateral and the electrical supply would be installed as part of the proposed new sewer system, that the system would be funded with a special assessment, that the Property would receive a duplex pump station because Petitioner's building on the Property is a four unit rental, that the meeting held on July 6, 2000 proposed the boundaries of the special assessment district and that the subsequent meeting, which was held January 15, 2001, would consider the amount of assessment for each parcel included in the district, and that if Petitioner was not happy with the result of the second meeting she could appeal to the Michigan tax tribunal. The consulting engineer and Petitioner's husband agreed on a location for the required grinder pump. Her husband signed a form so indicating.

The facts here are not similar to those in *Armstrong v. Manzo*, 380 U.S. 545 (1965). In *Armstrong* the petitioner received no notice until after his parental rights were terminated. Petitioner here was informed of the hearing prior to it taking place in January 2001. She was granted an opportunity to be heard at a meaningful time and in a meaningful manner, Id., at 552. Nor is this case similar to *Fuentes v. Shevin*, 407 U.S. 67 (1972) where the issue was whether notice was given at a meaningful time since here notice was personally given several months prior to the meeting at which the assessment was passed.

Further, subsequent to the meeting between Respondent's engineer and Petitioner and her husband, notice of the January 2001 meeting was published in a local newspaper. Respondent does not claim that "...publication alone...is a reliable means of acquainting interested parties of the fact that their rights are before the courts," *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950). However, more than "chance alone," Id., is involved in newspaper notice if an interested party has been personally informed of the impending event prior to publication. Here "...publication was reinforced by steps likely to attract the parties attention to the proceedings," Id at 316.

Petitioner ignored the information supplied by the engineer. Petitioner ignored the information published in the local newspaper. Having received actual and timely notice of the creation of the special assessment district in which the Property was to be included, and having ignored that notice, Petitioner should not be able to claim here that she did not receive it.

In addition to the notice given by the engineer and newspaper publication, Petitioner received a tax bill that indicated the amount of the assessment prior to payment for the assessment being both due and paid.

On December 5, 2001 Respondent sent a letter to Petitioner that included an amortization chart of the

assessment applied to the Property. This letter was sent to 9715 Daisy Lane, the address at which Petitioner resides. Petitioner received the letter and called immediately to schedule a meeting with Respondent's utilities coordinator to protest the amount of the assessment. That meeting was held December 10, 2001.

Per the terms of the mortgage on the Property, Petitioner's mortgagee had authority to pay "yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the property..." An unpaid special assessment on the Property may most definitely attain priority over the mortgagee's security interest. Mich. Comp. L. 41.730 requires that delinquent special assessments be treated as unpaid taxes. If property taxes are unpaid for a sufficient period of time real estate is transferred pursuant to a circuit court judgment of foreclosure to the county's foreclosing governmental unit. According to Mich. Comp. L. 211.78k(5)(c) that transfer grants fee simple title in the real estate to the foreclosing governmental unit free of all liens except future installments of special assessments and liens recorded pursuant to the state's natural resources and environmental protection act.

In order to protect its security, and acting in conformance with the terms of the mortgage, the mortgagee paid the assessment out of the escrow account. This payment was made December 14, 2001.

It is black letter agency law that a "...a principal is affected with knowledge of all material facts of which his agent receives notice or acquires knowledge while acting in the course of his employment and within the scope of his authority, although the agent does not in fact inform his principal thereof," Michigan Law and Practice, Agency, § 111.

But Petitioner had the same knowledge that the mortgagee, her escrow agent, had. The mortgage had been in place since October 1993. Payments had been made each

year for eight years by the time the payment at issue here was made. Petitioner, having received actual notice of the initial assessment, knew that the payment was going to be made by the mortgagee and she knew it in time to have taken action in order to preserve any rights she may have had. *Goldberg v. Kelly,* 397 U.S. 254 (1970).

II. Petitioner's property was properly included in the special assessment district.

Petitioner argues that because her apartment building is more than 200 feet from the right of way she is not required to connect to the sewer, Petitioner cites Mich. Com. L. 333.12751 in support of her position. This issue was never decided below. Nevertheless, Petitioner's argument is faulty and her reliance on that statute is misplaced.

Respondent's Ordinance 69, §7(A)(4)(a), requires "any existing structure located within a special assessment district created for the purpose of building and/or maintaining a sanitary sewer shall connect to the available sanitary sewer ...," (emphasis supplied). For an existing structure within a special assessment district there is no maximum distance beyond which connection is not required. The issue of distance arises if a structure is located outside the special assessment district. Thus, Ordinance 69, §7(A)(4)(b), requires an existing structure located outside a special assessment district to connect to a sanitary sewer if the structure is not more than 400 feet at the nearest point to the sanitary sewer. Because her apartment building is located within the special assessment district Ordinance 69 requires Petitioner to connect to the sewer regardless of how far her building is from the right of way.

Mich. Comp. L. 333.12751 defines "available public sanitary sewer system" as a public sanitary sewer system located in a right of way, easement, highway, street, or

public way which crosses, adjoins, or abuts upon the property and passing not more than 200 feet at the nearest point from a structure in which sanitary sewage originates." Mich. Comp. L. 333.12752 states that "the connection to available public sanitary sewer systems at the earliest, reasonable date is a matter for the protection of the public health, safety, and welfare and necessary in the public interest which is declared as a matter of legislative determination."

Petitioner assumes that because the term "available" is defined in Mich. Comp. L. 333.12751 as a sanitary sewer not more than 200 feet from a structure Respondent has no authority to require a structure located more than 200 feet from a right of way to connect to a sanitary sewer. Petitioner is wrong.

Mich. Comp. L. 333.12758(2) states that "sections 12752 to 12758 are in addition to and not in limitation of the power of a governmental unit to adopt, amend, and enforce ordinances relating to the connection of a structure in which sanitary sewage originates to its public sanitary sewer system." This language is the same as the language that was in Michigan Public Act 288 of 1972, §7. That statute was repealed by Michigan Public Act 368 of 1978, the act that contains, *inter* alia, Mich. Comp. L. 333.12751, Mich. Comp. L. 333.12752 and Mich. Comp. L. 333.12758.

The Michigan Attorney General addressed the question of whether, under Michigan Public Act 288 of 1972 a municipality could enforce an ordinance compelling a structure located more than 200 feet from a sanitary sewer to connect to that sewer. Citing the language now contained in Mich. Comp. L. 333.12758(2), the state Attorney General opined that such an ordinance could be enforced. The language "...is clearly indicative of the legislative intent. The act is not to be construed as a limitation of the power of municipal units of government to compel connection to public sewer systems. The State has not, by enactment of

1972 PA 288, reserved the field of regulation to itself," Opinions of the Attorney General 5372, 1978 Mich. AG LEXIS 47, pp. 8-9.

The condition of Petitioner's septic system reinforces the need for such local authority. Petitioner's field, located 30 feet from the Huron River, has had problems with sanitary waste surfacing. Contrary to ordinance and contrary to the order contained in a January 2, 2002 letter from the Livingston County Health Department, Petitioner attempted to "fix" her septic system without obtaining the necessary permits.

The legislature has found that "public sanitary sewer systems are essential to the health, safety, and welfare of the people of the state. Septic tank disposal systems are subject to failure due to soil conditions or other reasons. Failure or potential failure of septic tank disposal systems poses a threat to the public health, safety, and welfare; presents a potential for ill health, transmission of disease, mortality, and economic blight; and constitutes a threat to the quality of surface and subsurface waters of this state," Mich. Comp. L. 333.12752. Petitioner's system failed. Her illegal attempt to "fix" the system failed. Her apartment building presents "a potential for ill health" that connection to the sanitary sewer would eliminate.

It cannot be said that Petitioner's property was improperly included in the special assessment district since Respondent clearly has the authority to require Petitioner to connect to the sanitary sewer constructed in the special assessment district. However, the issue not having been addressed in the state courts, it ought not be addressed here, *TRW Inc. v. Andrews*, 534 U.S. 19 (2001); further, even if the issue had been addressed in the state courts the outcome would have been solely based on state law and should not be reviewed here. *Murdock v. Memphis*, 22 L. Ed. 429 (1875).

III. The amount of the special assessment was not disproportionate to the benefit bestowed.

This issue, like the issue of whether Respondent had the authority to include the Property in the special assessment district, was not addressed in the state court and ought not be addressed here. Nevertheless, Petitioner has incorrectly stated the applicable law. Petitioner states that the cost of the sanitary sewer will be 7.05 times more than the increase in value to the Property. To reach this conclusion Petitioner took the Property's 2001 state equalized value of $111,800 and doubled it to obtain a true cash, or market, value of $223,600. Petitioner then took the Property's 2002 state equalized value of $114,500 and doubled it to obtain a true cash, or market, value of value of 229,000.

No appraisals were done to verify that the assessor's increase in market value was correct. Nor was an appraisal done to verify the increase in the Property's value that would result from the sewer installation.

Based only on the assessor's records the 2002 true cash value was $5,400 more than the 2001 true cash value. Petitioner compared the $5,400 increase in true cash value to the $38,073.79 which amount is the total cost of the special assessment. Finally Petitioner concluded that $38,073.79 is 7.05 times more the 2002 increase in true cash value and therefore disproportional under the principle enunciated in *Dixon Road Group et. al. v. The City of Novi*, 426 Mich 390, 395 N.W.2d 211 (1986).

Petitioner also refers to *Eleanor Recsteiner v. Township of Blumfield,* Michigan tax tribunal Docket 246853, 2000 Mich Tax LEXIS 2 as authority for her method calculating the increase in the Property's value and determining whether the benefit was disproportionate to the cost.

The tax tribunal did not decide whether the cost of the special assessment was disproportionate to the increase in the Property's value. This appeal was dismissed for other reasons and so the tax tribunal never had to decide whether the special assessment was disproportionate to the increase in value attributable to the sanitary sewer. Furthermore, Petitioner's reliance on the tax tribunal's opinion in *Recsteiner, supra,* is misplaced. That case dealt with the installation of a water line, not a sanitary sewer. Local governments do not have the same ability to require a property owner to connect to a water line that they have with respect to a sewer line. Furthermore, in *Recsteiner* the evidence indicated that the water in petitioner's well was safe to drink. There was a full hearing. Appraisers testified. The various approaches concerning how to measure the increase in value attributable to the water line were presented and analyzed. Perhaps most importantly, the respondent's own appraiser testified that the increase in value attributable to the water line was less than the amount specially assessed. The tax tribunal did not then enjoin the respondent from including the petitioner in the special assessment district as Petitioner here would like. Rather, the tax tribunal upheld the assessment and used the respondent's evidence of value as the basis for determining the amount by which the value of the petitioner's property increased.

This case is entirely different. There is evidence that the Petitioner's septic system has been a health hazard. There has been no hearing in the tax tribunal to determine whether the assessment is proportionate to the increase in the Property's value. No appraisers have testified and been cross-examined. Not having litigated the issue of proportionality in the tax tribunal there is no reason to consider that issue now, *TRW Inc. v. Andrews*, 534 US 19 (2001).

CONCLUSION

Supreme Court Rule 10, although by its own terms "neither controlling nor fully measuring the Court's discretion, indicate(s) the character of the reasons the Court considers..." when reviewing a petition for a writ of certiorari. None of the listed reasons apply here. This case does not involve a decision of a United States court of appeals that conflicts with another federal court of appeals; it does not involve a decision of a state court of last resort that has decided an important federal question in a way that conflicts with a federal court of appeals or another state court of last resort; nor does it involve a state court of federal court of appeals decision of an important federal question that conflicts with a decision of this Court.

This case concerns a claim by Petitioner that she did not receive actual notice of a meeting at which Respondent created a special assessment district. Respondent claims she did receive actual notice of that meeting. The Michigan tax tribunal found that Petitioner received actual notice. The state court of appeals refused to set aside that finding. At its core this case is not about what process is due from a legal standpoint; it concerns whether Petitioner factually received that process.

Rule 10 concludes with the statement "a petition for certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." That is exactly what Petitioner is asking this Court to do.

The fundamental question here is whether Petitioner received actual notice of the meeting at which a special assessment district was created in advance of the date it was held. The Michigan courts have determined she did. Petitioner denies it. That is a question of fact. There is no "important federal question" involved. Consequently there is

no reason to disturb the decisions of the Michigan forums that have ruled on this case.

The judgment of the Michigan court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX

STATUTES AND ORDINANCES INVOLVED

MICHIGAN STATUTES:

§ 41.724a. Notice of hearings in special assessment proceedings.

Sec. 4a. (1) If special assessments are made against property, notice of hearings in the special assessment proceedings shall be given as provided in this section.

(2) Notice of hearings in special assessment proceedings shall be given to each record owner of, or party in interest in, property to be assessed whose name appears upon the last township tax assessment records by first-class mail addressed to the record owner or party in interest at the address shown on the tax records, at least 10 days before the date of the hearing. The last township tax assessment records means the last assessment roll for ad valorem tax purposes that was reviewed by the township board of review, as supplemented by any subsequent changes in the names or the addresses of the owners or parties listed on that roll. If a record owner's name does not appear on the township tax assessment records, then notice shall be given by first-class mail addressed to the record owner at the address shown by the records of the county register of deeds at least 10 days before the date of the hearing. Notice shall also be published twice before the hearing in a newspaper circulating in the township. The first publication shall be at least 10 days before the date of the hearing. If a published notice includes a list of the property identification numbers of the property to be assessed, that list may provide either the individual property identification number for each parcel of property to be assessed or 1 or more sequential sets of property identification numbers, which include each parcel

of property to be assessed. If a published notice includes a list of the property identification numbers of the property to be assessed, that published notice shall also include either a map depicting the area of the proposed special assessment district or a written description of the proposed special assessment district.

(3) If a person whose name and correct address do not appear upon the last township tax assessment records claims an interest in real property, that person shall immediately file his or her name and address with the township supervisor. This filing is effective only for the purpose of establishing a record of the names and addresses of those persons entitled to notice of hearings in special assessment proceedings. The supervisor shall immediately enter on the tax assessment records any changes in the names and addresses of record owners or parties in interest filed with the supervisor and at all times shall keep the tax assessment records current, complete, and available for public inspection.

(4) A township officer required to give notice of a hearing in special assessment proceedings may rely upon the last township tax assessment records in giving notice of the hearing by mail. The method of giving notice by mail as provided in this section is declared to be the method that is reasonably certain to inform those to be assessed of the special assessment proceedings.

(5) Failure to give notice as required in this section shall not invalidate an entire assessment roll, but only the assessment on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if the owner or the party in interest of that property actually received notice, waived notice, or paid any part of the assessment. If an assessment is declared void by court decree or judgment, a reassessment against the property may be made.

(6) A special assessment hearing held before June 5, 1974 is validated, insofar as any notice of hearing is concerned, if notice was given by mail to the owners or parties in interest whose names appeared at the time of mailing on the last township tax assessment records. Any such special assessment hearing is validated as to any owner or party in interest who actually received notice of hearing, waived the notice, or paid any part of the special assessment.

§ 41.730. Reassessment of delinquent assessments. Sec. 10. In case the treasurer shall, as above provided, report as delinquent any assessment or part thereof, the township board shall certify the same to the supervisor, who shall reassess on the annual township tax roll of such year in a column headed "special assessments" the sum so delinquent, with interest and penalties to September 1 of such year, and an additional penalty of 6% of the total amount. Thereafter the statutes relating to township taxes shall be applicable to such reassessments.

§ 211.78k. Proof of service of notice; filing with circuit court; contesting validity or correctness by person claiming property interest; filing objections; order extending redemption period; entry of judgment; specifications; failure to pay delinquent taxes, interest, penalties, and fees after entry of judgment; appeal to court of appeals; recording judgment or notice of judgment; cancellation; submission of certificate of error.
Sec. 78k. (1) If a petition for foreclosure is filed under section 78h, not later than the date of the hearing, the foreclosing governmental unit shall file with the clerk of the circuit court proof of service of the notice of the show cause

hearing under section 78j, proof of service of the notice of the foreclosure hearing under this section, and proof of the personal visit to the property and publication under section 78i.

(2) A person claiming an interest in a parcel of property set forth in the petition for foreclosure may contest the validity or correctness of the forfeited unpaid delinquent taxes, interest, penalties, and fees for 1 or more of the following reasons:

(a) No law authorizes the tax.

(b) The person appointed to decide whether a tax shall be levied under a law of this state acted without jurisdiction, or did not impose the tax in question.

(c) The property was exempt from the tax in question, or the tax was not legally levied.

(d) The tax has been paid within the time limited by law for payment or redemption.

(e) The tax was assessed fraudulently.

(f) The description of the property used in the assessment was so indefinite or erroneous that the forfeiture was void.

(3) A person claiming an interest in a parcel of property set forth in the petition for foreclosure who desires to contest that petition shall file written objections with the clerk of the circuit court and serve those objections on the foreclosing governmental unit prior to the date of the hearing required under this section.

(4) If the court determines that the owner of property subject to foreclosure is a minor heir, is incompetent, is without means of support, or is undergoing a substantial financial hardship, the court may withhold that property from foreclosure for 1 year or may enter an order extending the redemption period as the court determines to be equitable. If the court withholds property from foreclosure under this subsection, a taxing unit's lien for taxes due is not prejudiced and that property shall be included in the immediately

succeeding year's tax foreclosure proceeding.

(5) The circuit court shall enter final judgment on a petition for foreclosure filed under section 78h at any time after the hearing under this section but not later than the March 30 immediately succeeding the hearing with the judgment effective on the March 31 immediately succeeding the hearing for uncontested cases or 10 days after the conclusion of the hearing for contested cases. All redemption rights to the property expire on the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case 21 days after the entry of a judgment foreclosing the property under this section. The circuit court's judgment shall specify all of the following:

(a) The legal description and, if known, the street address of the property foreclosed and the forfeited unpaid delinquent taxes, interest, penalties, and fees due on each parcel of property.

(b) That fee simple title to property foreclosed by the judgment will vest absolutely in the foreclosing governmental unit, except as otherwise provided in subdivisions (c) and (e), without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

(c) That all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments and liens recorded by this state or the foreclosing governmental unit pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to MCL 324.90106, are extinguished, if all forfeited delinquent taxes, interest, penalties, and fees are

not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

(d) That, except as otherwise provided in subdivisions (c) and (e), the foreclosing governmental unit has good and marketable fee simple title to the property, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

(e) That all existing recorded and unrecorded interests in that property are extinguished, except a visible or recorded easement or right-of-way, private deed restrictions, or restrictions or other governmental interests imposed pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

(f) A finding that all persons entitled to notice and an opportunity to be heard have been provided that notice and opportunity. A person shall be deemed to have been provided notice and an opportunity to be heard if the foreclosing governmental unit followed the procedures for provision of notice by mail, for visits to forfeited property, and for publication under section 78i, or if 1 or more of the following apply:

(i) The person had constructive notice of the hearing under this section by acquiring an interest in the property after the date the notice of forfeiture is recorded under section 78g.

(ii) The person appeared at the hearing under this section or filed written objections with the clerk of the circuit court under subsection (3) prior to the hearing.

(iii) Prior to the hearing under this section, the person had actual notice of the hearing.

(g) A judgment entered under this section is a final order with respect to the property affected by the judgment and except as provided in subsection (7) shall not be modified, stayed, or held invalid after the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or for contested cases 21 days after the entry of a judgment foreclosing the property under this section.

(6) Except as otherwise provided in subsection (5)(c) and (e), fee simple title to property set forth in a petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section, shall vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property. The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and shall not be stayed or held invalid except as provided in subsection (7) or (9).

(7) The foreclosing governmental unit or a person claiming to have a property interest under section 78i in property foreclosed under this section may appeal the circuit court's order or the circuit court's judgment foreclosing property to the court of appeals. An appeal under this subsection is limited to the record of the proceedings in the circuit court under this section and shall not be de novo. The circuit court's judgment foreclosing property shall be stayed until

the court of appeals has reversed, modified, or affirmed that judgment. If an appeal under this subsection stays the circuit court's judgment foreclosing property, the circuit court's judgment is stayed only as to the property that is the subject of that appeal and the circuit court's judgment foreclosing other property that is not the subject of that appeal is not stayed. To appeal the circuit court's judgment foreclosing property, a person appealing the judgment shall pay to the county treasurer the amount determined to be due to the county treasurer under the judgment on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section, together with a notice of appeal. If the circuit court's judgment foreclosing the property is affirmed on appeal, the amount determined to be due shall be refunded to the person who appealed the judgment. If the circuit court's judgment foreclosing the property is reversed or modified on appeal, the county treasurer shall refund the amount determined to be due to the person who appealed the judgment, if any, and retain the balance in accordance with the order of the court of appeals.

(8) The foreclosing governmental unit shall record a notice of judgment for each parcel of foreclosed property in the office of the register of deeds for the county in which the foreclosed property is located in a form prescribed by the department of treasury.

(9) After the entry of a judgment foreclosing the property under this section, if the property has not been transferred under section 78m to a person other than the foreclosing governmental unit, a foreclosing governmental unit may cancel the foreclosure by recording with the register of deeds for the county in which the property is located a certificate of error in a form prescribed by the department of treasury, if the foreclosing governmental unit discovers any of the

following:

(a) The foreclosed property was not subject to taxation on the date of the assessment of the unpaid taxes for which the property was foreclosed.

(b) The description of the property used in the assessment of the unpaid taxes for which the property was foreclosed was so indefinite or erroneous that the forfeiture of the property was void.

(c) The taxes for which the property was foreclosed had been paid to the proper officer within the time provided under this act for the payment of the taxes or the redemption of the property.

(d) A certificate, including a certificate issued under section 135, or other written verification authorized by law was issued by the proper officer within the time provided under this act for the payment of the taxes for which the property was foreclosed or for the redemption of the property.

(e) An owner of an interest in the property entitled to notice under section 78i was not provided notice sufficient to satisfy the minimum requirements of due process required under the state constitution of 1963 and the constitution of the United States.

(f) A judgment of foreclosure was entered under this section in violation of an order issued by a United States bankruptcy court.

(10) A certificate of error submitted to the county register of deeds for recording under subsection (9) need not be notarized and may be authenticated by a digital signature of the foreclosing governmental unit or by other electronic means.

§ 211.744. Failure to give notice; actual notice; waiver of notice; payment of assessment; reassessment.

Sec. 4. Any failure to give notice as required in section 1 shall not invalidate an entire assessment roll but only the assessments on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if the owner or the party in interest thereof has actually received notice, has waived notice, or has paid any part of the assessment. If any assessment is declared void by court order or judgment, a reassessment against the property may be made.

§ 333.12751. Definitions pertaining to sections 12752-12758.

Sec. 12751. As used in sections 12752 to 12758:

(a) "Acceptable alternative greywater system" means a system for the treatment and disposal of waste water which normally does not receive human body wastes or industrial waste and is approved for use by a local health department.

(b) "Acceptable innovative or alternative waste treatment system" means a decentralized or individual waste system which has been approved for use by a local health department and which is properly operated and maintained so as not to cause a health hazard or nuisance. An acceptable innovative or alternative waste treatment system may include, but is not limited to, an organic waste treatment system or compost toilet which operates on the principle of decomposition of heterogeneous organic materials by aerobic and facultatively anaerobic organisms and utilizes an effectively aerobic composting process which produces a stabilized humus. Acceptable innovative or alternative waste treatment system does not include a septic tank--drain field system or any other system which is determined by the department to pose a similar threat to the public health, safety and welfare, and the quality of surface and subsurface waters of this state.

(c) "Available public sanitary sewer system" means a public sanitary sewer system located in a right of way, easement, highway, street, or public way which crosses, adjoins, or abuts upon the property and passing not more than 200 feet at the nearest point from a structure in which sanitary sewage originates.

(d) "Person" means a person as defined in section 1106 or a governmental entity.

(e) "Public sanitary sewer system" means a sanitary sewer or a combined sanitary and storm sewer used or intended for use by the public for the collection and transportation of sanitary sewage for treatment or disposal.

(f) "Structure in which sanitary sewage originates" or "structure" means a building in which toilet, kitchen, laundry, bathing, or other facilities which generate water-carried sanitary sewage are used or are available for use for household, commercial, industrial, or other purposes.

§ 333.12752. Sanitary sewer systems; public interest; declaration as legislative determination.

Sec. 12752. Public sanitary sewer systems are essential to the health, safety, and welfare of the people of the state. Septic tank disposal systems are subject to failure due to soil conditions or other reasons. Failure or potential failure of septic tank disposal systems poses a threat to the public health, safety, and welfare; presents a potential for ill health, transmission of disease, mortality, and economic blight; and constitutes a threat to the quality of surface and subsurface waters of this state. The connection to available public sanitary sewer systems at the earliest, reasonable date is a matter for the protection of the public health, safety, and welfare and necessary in the public interest which is declared as a matter of legislative determination.

§ 333.12758. Voluntary connection; government agencies, act provisions are in addition to, not limitation of powers.

Sec. 12758. (1) Sections 12752 to 12758 shall not limit the right of the owner of a structure in which sanitary sewage originates voluntarily to connect the structure to a public sanitary sewer system where the operator of the system agrees to the connection.

(2) Sections 12752 to 12758 are in addition to and not in limitation of the power of a governmental unit to adopt, amend, and enforce ordinances relating to the connection of a structure in which sanitary sewage originates to its public sanitary sewer system.

TOWNSHIP ORDINANCE:

Ordinance 69: Wastewater Treatment and Administration Ordinance.

§7(A)(4) *Mandatory Connections.*

a. *New and existing structures located within sewer special assessment districts (SADDs).* Any existing structure located within a special assessment district created for the purpose of building and/or maintaining a sanitary sewer shall connect to the available sanitary sewer within twelve (12) months after publication by the Township of a legal notice of the availability of the sanitary sewer in a newspaper of general circulation in the Township and/or by individual notice. Connection for any new structure must be made prior to the time the structure is occupied.

b. *Existing structures not located within sewer special assessment districts (SSADs).* Any existing structure shall connect to the sanitary sewer after publication by the

Township of a legal notice of the availability of the sanitary sewer in a newspaper of general circulation in the Township and/or by individual notice. For purposes of this section, a sanitary sewer shall be considered to be available when it is located not more than four hundred feet (400') at the nearest point from the structure. All existing structures shall connect upon the earlier of the occurrence of the following three events:

(i) In the case where existing on-site sewage disposal systems were installed and a permit was issued by the Livingston County Health Department, DEQ, and/or MDPH, fifteen (15) years from the date of the said permit.

(ii) In the case where on-site sewage disposal exists for which no permits were issued by the LCHD, DEQ, and/or MDPH, connections must be made immediately.

(iii) Whenever any modifications to or replacement of any on-site sewage disposal systems that requires the issuance of a permit through LCHD, DEQ, and/or MDPH.